**VICTIM-OFFENDER MEDIATION:
A CASE STUDY AND ARGUMENT**

**FOR EXPANSION TO CRIMES OF VIOLENCE**

**Bhavya Mahajan**

1. **INTRODUCTION**

Restorative justice, as an alternative to the retributive justice system, is a victim-centered response to crime. It gives the individuals affected by the crime, including the victim, the offender, their families, and the community representatives, an opportunity to be involved in a dialogue and respond to the harm caused by the crime.[[1]](#footnote-1)

Victim Offender Mediation (VOM) is one of the broadest restorative justice policies serving the offenders and crime victims, by providing a process that allows the victims to meet and communicate with their offender in a safe and structured setting. The goal of the VOM is to hold the offenders directly accountable to the victims, and at the same time focus on providing assistance and adequate compensation to the victims.[[2]](#footnote-2) It also provides the offenders an opportunity to take direct responsibility for their actions, understand the impact it has had on the victims, and plan to make amends.[[3]](#footnote-3)

Both restorative justice and VOM specifically continue to be identified as primarily, if not exclusively, addressing non-violent property crimes and perhaps even minor assaults.[[4]](#footnote-4) However, various studies present some empirical evidence which suggests that many of the principles of restorative justice can be applied in crimes of severe violence, including murder. Some even suggest that the deepest healing impact of restorative justice is to be found in addressing and responding to such violent crimes.[[5]](#footnote-5)

The aim of this paper is to study and analyze the efficacy of victim-offender mediation in violent crimes, using (or utilizing) existing case studies and analysis of cases as evidence. The first section will give an introduction about the VOM process, its historical background and the use of VOM in cases involving extreme violence cases. A brief description about existing VOM programs and well established case studies will be presented. Then, the author will present a relatively recent case study of the Grosmaires and Conor McBride case, which happened in 2010. Lastly, there will be a critical analysis from the author to understand the strengths and weaknesses of using VOM for violent crimes, especially in lieu of a trial.

1. **VICTIM-OFFENDER MEDIATION: AN INTRODUCTION**

With an increasing interest in alternative dispute resolution, restorative justice has gained popularity. Also, the application of mediation techniques in the context of victims and offenders has been introduced.[[6]](#footnote-6)

Victim-Offender Mediation, as a branch of restorative justice, provides the victims of a crime with an opportunity to have a dialogue with their offender, in a safe and structured setting with the help of a trained mediator. It has become important to have a better understanding of the process in the American society, where the practice is still subject to various debates.[[7]](#footnote-7)

Primarily, the goal of VOM is to hold the offenders directly accountable to the victims and simultaneously seek an adequate compensation for them. In many cases, restitution agreements between the victims and offenders are reached as well. This process also provides an opportunity for the offenders to take direct responsibility for their actions and to understand the impact of their actions.[[8]](#footnote-8)

VOM practices have increased rapidly over the past few decades under the American system. It started from dealing with minor and property related crimes, but has now extended to cases of minor and occasionally severe assaults. While the instances of latter are few, there are people who strongly advocate the ‘therapeutic’ use of VOM and its efficacy.

**2.1 HISTORICAL BACKGROUND**

 The practice of victim-offender mediation first began in the Ontario province of Canada, and was then referred to as criminal court mediation by many. This experiment in Elmira, Ontario in May 1974, is the earliest example of restorative reform in the justice system. Here, two young men pleaded guilty to twenty- two instances of property damage, and their probation officer and his colleague, using their insight, tried some basic peace-making principles to resolve matters between these men and the twenty-two victims. [[9]](#footnote-9)

 A recommendation was then made to the court, to allow these men to meet with every single victim and assess the loss that has occurred. After the meetings, the offenders had a better understanding of the impact of their criminal behavior. Finally, they were sentenced by the judge to pay restitution to these victims, , which was paid by the offenders themselves, three months later in full.[[10]](#footnote-10)

 This experiment led to the beginning of victim-offender reconciliation programs in North America. VOM, in Canada, has spread to nearly twenty jurisdictions and is mainly viewed as an ‘alternative measures’ program with regard to the Canadian Young Offender Act, 1984.[[11]](#footnote-11)

 Following the growth of VOM in Canada, similar programs were adopted in the States. VOM, primarily started in the Mid-West with a few programs[[12]](#footnote-12) but has gained popularity across various other jurisdictions. By 1989, these programs were reported to have expanded in at least 42 different jurisdictions across the United States. Canada, Germany, England, and New Zealand are other countries where VOM is becoming increasingly popular.[[13]](#footnote-13)

The rise in the number of VOM programs has been steady, and it has grown from less than three dozen programs in the 1980s to over 200 programs by the year 1996. Currently, throughout the world, more than thirteen hundred VOM programs are known to exist, with the maximum of 450 programs in Germany and 302 programs in the United States.[[14]](#footnote-14)

Accordingly, the increase in the number of cases dealt with by these programs has been consistent too. Generally, most of these cases focused on non-violent property offenses and minor assaults. However, a few programs also dealt with violent felony and some other severe violence crimes.[[15]](#footnote-15)

The deeper roots of VOM are believed to be associated with the traditions of numerous indigenous peoples on many continents, who have long held the view that criminal offenses represent a tear in the social fabric, which must be healed, and face-to-face conversations between victims and offenders could prove very helpful in this.[[16]](#footnote-16)

Under one such practice in New Zealand each individual offender and his or her particular victim(s) are brought together to talk. They are joined by various representatives of the community who have a stake in the resolution.[[17]](#footnote-17) In modern versions, such representatives may include the police, teachers, parents, and peers. The goal of such a face-to-face meeting is not simply victim reparation but also, the opportunity for dialogue, and reaching a consensus on the appropriate outcome or disposition for the case.[[18]](#footnote-18) Among Native Americans, traditional Lakota and Dakota people employed a similar model.[[19]](#footnote-19)

These models bear a striking resemblance to the modern-day Restorative Circles, where members, other than the victim(s) and offender(s), are present, and have a say in the final decision-making. These generally include, the attorneys, a mediator and even the families of victim(s) and offender(s).

To describe the ideology of these traditional approaches, John R. Gehm writes, “According to these approaches, not only must effective punishment publicly condemn, it must also make provision for reintegration of the offender back into the community. Without such a restorative component and concomitant ceremonies or rituals of inclusion, the potential for stigmatization becomes very great.”[[20]](#footnote-20)

1. **VICTIM-OFFENDER MEDIATION IN SEVERE VIOLENCE CRIMES**

A distinction is drawn between the retributive criminal justice system and the restorative justice system based upon its goal. While the former focuses on ‘justice’ by punishing the criminal, the latter moves a step forward and focuses on individuals (victim and offender, both) and their healing.[[21]](#footnote-21)

There has been an on-going debate about whether victim-offender mediation, in particular, or restorative justice, in general, can be used in severe violence crime cases. So far, both these practices have been used to predominantly address non-violent property crimes and perhaps even minor assaults.

A 1990 VOM survey showed that most of the programs in the juvenile justice system excluded violent and sex offenders. As many as two-thirds of cases reported under these programs in 1996-97 involved only misdemeanor cases and 45% of such programs dealt with juvenile offences only.[[22]](#footnote-22) These figures support the notion that “VOM is typically used as a ‘front-end’ diversionary option, reserved primarily for ‘lightweight’ cases.”[[23]](#footnote-23)

On the contrary, various studies and cases present empirical evidence that suggests that many of the principles of restorative justice can be applied in crimes of severe violence, including murder. Some even suggest that the deepest healing impact of restorative justice is to be found in addressing and responding to such violent crimes.[[24]](#footnote-24)

“A number of programs have now mediated violent assaults, including rapes, and mediations have taken place between murderers and the families of their victims. Mediation has been helpful in repairing the lives of surviving family members and the offender in drunk-driving fatalities.”[[25]](#footnote-25) As of year 1999, in Texas, there was a waiting list of nearly 300 victims of severe violence, including many parents of murdered children, who had requested a meeting with an offender through VOM/VOD of the Victim Services Unit, Texas Department of Criminal Justice.[[26]](#footnote-26) Thus, in cases of severely violent crimes, VOM has not been a substitute for prison sentence, but seldom prison terms have been reduced post-mediation.[[27]](#footnote-27)

Some studies have gone a step ahead to comment on the efficacy of VOM and restorative justice in capital punishment/death penalty cases. Those opposing VOM in such cases argue that the capital cases create special challenges, and are thus beyond the scope of restorative justice. Most importantly, in these cases, the victim is dead, so there is no relationship to be repaired, and the harm to the victims’ family members is too extreme to be solely dealt with mediation.[[28]](#footnote-28)

To address these concerns, it is important to understand that restorative justice in severe violence cases, is not done in lieu of trial or the retributive justice system, rather it is coupled with the retributive system. In this regard, a few studies have assessed such cases where the use of VOM proved effective between the convicted offenders and the family members of murdered victims.[[29]](#footnote-29) An account of these studies, along with the remarks of victims and offenders will be given at a later stage in this paper.

To determine the effectiveness of VOM programs, scholars have often discussed the effects that it attempts to achieve. Accordingly, three broad goals of VOM have been stated. These are: (1) to benefit the victim and co-victims, (2) to benefit the offender and the offender's family, and (3) to benefit the community.[[30]](#footnote-30)

Specifically, VOM attempts to provide victims with the opportunity to confront their offender, to have their questions answered, to participate in the criminal justice process, to be empowered through participation in developing a restitution agreement, and to forgive. VOM further allows offenders the opportunity to acknowledge their wrongdoing and experience sincere remorse, and brings personal healing to victims. Additionally, it assists in the offender's own rehabilitation, changes the way victims view the offender, and contributes to their spiritual well-being.[[31]](#footnote-31)

More recently a "humanistic victim offender mediation" approach has been proposed, which re-focuses the goal of VOM to be healing through dialogue rather than arriving at a restitution agreement.[[32]](#footnote-32) Many VOM programs have been adapted for cases of severely violent crimes, some highly therapeutic in form and others more "dialogue driven," but all focusing on the dialogue as the purpose of the mediation.[[33]](#footnote-33)

Applying this approach, a Victim Sensitive Offender Dialogue (VSOD) model has been adopted, which utilizes three phases: (1) case development; (2) victim offender dialogue; and (3) follow up.[[34]](#footnote-34) In the first phase, the possibility of mediation is assessed by visiting the victims, offenders, and other associated systems, numerous times. An agreement is then developed between the parties, regarding the expectations of the mediation, and preparing them as necessary. The second phase involves the actual dialogue between the parties including pre-dialogue briefing, and post-dialogue de-briefing. Finally, the last phase involves meeting with parties to talk about any unmet needs, to seek (or gather) feedback, and close the case.[[35]](#footnote-35)

**3.1 EXISTING VOM/VOSD/VORP IN EXTREME VIOLENCE CASES**

 Several studies conducted regarding the existing VSOD and VOM programs present a point of view of victims and offenders associated with violent crime cases. Some interviews with the staff and volunteers also reiterated the point that each of these programs attempt to deal with the pain and loss of victims and help offenders take the responsibility for their actions. The director of the Texas VSOD project states, "The purpose of the process is healing. While it is not therapy, it's very therapeutic."[[36]](#footnote-36)

Some of the existing VSOD and VOM programs existing across the United States and Canada will be outlined below:

1. **VICTIM OFFENDER MEDIATION PROJECT, Langley, British Columbia**

Beginning February 1991, the Victim Offender Mediation Project (VOMP) started working with the victims and offenders in cases of serious crimes such as sexual assault, serial rape, murder, and armed robbery. VOMP has its roots in the Victim Offender Reconciliation Programs (VORPs), which have been pioneered in Langley since 1979[[37]](#footnote-37).

Over a period of years, with input from victims and offenders, the VOMP was developed to emphasize healing rather than reconciliation. Most of the cases rendered under this program are referred after sentencing and post-incarceration. Simply put, the VOMP have their focus on the therapeutic aspect of the VORP, only.[[38]](#footnote-38)

With a structure slightly different and more rigid than other victim-offender mediation programs, VOMP works only with trained staff and may often include communication between victims and offenders via letters, videotaped interviews, and exchange of video statements.[[39]](#footnote-39) Despite the variations from the conventional ways of operation, the feedback by victims and offenders, in the past, has been very positive regarding their VOMP experience.

1. **VICTIM OFFENDER MEDIATION/DIALOGUE PROGRAM - PENNSYLVANIA**

The Pennsylvania Victim Offender Mediation program which operates under the auspices of the Department of Corrections is one of the programs that works with a range of violent crimes including those where the offender has a death sentence.[[40]](#footnote-40)

The program was designed utilizing restorative justice principles over a period of five years the process/operations have been refined. It focuses on starting a dialogue where the victim may share the impact and trauma of the crime, ask questions about it and receive answers and additional information from the offender. Simply put, it "provides an opportunity for the victim to be heard" and "gives the offender an opportunity to accept responsibility for his/her actions and to express his/her feelings about the crime and its consequences."[[41]](#footnote-41)

The programs are run by extensively trained staff and volunteers and also provide an option of indirect communication between the victims and offenders during the program.

1. **VICTIM SENSITIVE OFFENDER DIALOGUE PROGRAM – MINNESOTA**

The Victim Sensitive Offender Dialogue Program (VSOD) for crimes of severe violence began as a modest initiative in 1991, and worked with a limited number of cases in Minnesota and other states.[[42]](#footnote-42) It was a direct response to a small, but constantly growing number of victims and survivors of severe violence who requested assistance to meet with the involved offender.[[43]](#footnote-43) Most of these offenders were inmates in a maximum-security prison.

The VSOD program is currently in a transition period. Initially the programs started with the efforts of Dr. Mark S. Umbreit and a few other mediators but it has now developed as a statewide initiative, at the request of the Minnesota Department of Corrections. The center continues to respond to requests initiated by victims from other states as well.[[44]](#footnote-44) Cases from other states always require an on-site co-mediator to assist extensively with case development. As part of expanding the program, approximately 15 to 20 mediators will be trained and supported to work in this broader initiative. Today the VSOD program consists of three components: case services, training, and research.[[45]](#footnote-45)

* 1. **CLIENT SATISFACTION**

VOM proponents often speak of humanizing the justice system. Traditionally, victims are not a part of the justice process. Neither victim nor offender get an opportunity to put forward their stories. The victims are represented by the state, and the offenders rarely get a chance to notice the impact of their actions on people, thereby, leaving the victims without a narrative or explanations and no choice, but to fill their thoughts with stereotypes and assumptions about the offenders.[[46]](#footnote-46)

Reformers believe that VOM offers opportunities for both parties to come together in a controlled setting to share the pain of being victimized and to have answers to the questions of why and how. It was thought that by personalizing the consequences of crime, the satisfaction levels with the entire justice process will be increased.[[47]](#footnote-47)

Most of the studies reviewed reported satisfaction of victims and offenders with VOM and its outcomes, in one way or the other. Researchers found high levels of participant satisfaction across different program sites, in different types of cases, and held by those of different cultural backgrounds. Before exploring the nature of this satisfaction further, it was noted that, from 40 to 60 percent of those offered with an opportunity to participate in VOM refused, making it evident that participation is a highly self-selective process.[[48]](#footnote-48)

Expressions of satisfaction with VOM are consistently high for both victims and offenders regardless of whether the offense is violent or non-violent in nature. Typically, eight or nine out of ten participants report being satisfied with the process and with the resulting agreement.[[49]](#footnote-49) A victim of violent crime indicated that prior to mediation, "I was consumed with hate and rage and was worried what I would do when he got out."[[50]](#footnote-50)

These high levels of satisfaction with VOM also translated into relatively high levels of satisfaction with the criminal justice system. Where comparison groups were studied, those victims and offenders going through mediation were far more satisfied with the criminal justice system than those going through traditional court prosecution.[[51]](#footnote-51)

 The efficacy of VOM in crimes of severe violence has been best presented through case studies. A brief account of traditional VOM in violent crime, murder cases specifically, is presented in the case overview below.

**3.2.1 CASE OVERVIEW-EXISTING**

1. **Jan Ellison-Allen Jones Case**

Mark Ellison was murdered in August 1983 in a bungled robbery where a $15 Timex and a $20 silver chain were stolen. The man convicted for the killing, Allen Jones, was a small drug dealer and was high on booze, and drugs at the time of the incident. He was sentenced to a maximum-security prison for 27 years.[[52]](#footnote-52) After Mark’s death, Jan Ellison’s (Mark’s mother) grieved deeply. Her life was shattered. Overtime, she started interacting with other families who had lost their child and became active in the victim rights movement. It was then that she developed a desire to confront the man who killed her son.[[53]](#footnote-53)

In spite of the odds, Allen Jones and Jan Ellison agreed to the meeting with a mediator present. The mediator worked several months pre-mediation to help both the parties understand the process and the aim of victim-offender mediation/dialogue. They were also asked to clarify their own needs and expectations. In May 1991, eight years after the murder of her son, Jan Ellison met with the man who had killed him. She wanted him to see her pain, to feel the harm that he has done, to have a glimpse of Mark, and to answer all those questions that were left unanswered.[[54]](#footnote-54)

During the initial stage of the dialogue, a couple hours into the conversation, many questions were answered and deep pain was exchanged. Allen asked questions about Mark and expressed the pain he and his family had felt ever since that incident. Deeper into the conversation, they found areas of common ground. Allen had lost custody of his daughters because of his actions, and Jan and Allen both understood the pain of losing loved ones. In the end, he just hoped for forgiveness.[[55]](#footnote-55)

While Jan wanted Allen to do well and did not see him as inhuman anymore, it was difficult for her to be able to forgive him. They met a second time nearly two years later, when Allen said, “This is really hard for me to say. I guess we each want something from one another. I want you to give me Mark, and you can’t do that. You want me to give you forgiveness, and I can’t do that. But not giving you forgiveness doesn’t mean that I don’t want to help. I just can’t. I tried.”[[56]](#footnote-56)

At that point, both were struggling with moving on. Although Allen did not receive forgiveness from Jan, he felt satisfied by the overall process. Jan was grateful for the opportunity to meet with Allen and felt it was necessary for her healing process. She now believed that there was a life for her after murder and while so many doors had closed, many others had opened too.[[57]](#footnote-57)

1. **CASE STUDY: GROSMAIRES-CONOR McBRIDE CASE**

 The January 2013 edition of the New York Times Magazine put limelight on a murder case that got resolved in a very unique way, and challenged all traditional ways of the retributive and restorative justice systems.

 Restorative circles, a type of Victim Offender Mediation, had never been used to determine the outcome of a murder case before. What we have studied and read so far, about VOM in severe violence cases has focused on using this method in post-conviction cases for achieving therapeutic goals for victims and offenders, both. However, in the present case, a VOM model was applied to determine the goals usually achieved in the criminal justice system, the sentence of the offender, the restitution, as well as achieve the other goals that a conventional VOM aims at.

 On March 28, 2010, Conor McBride shot his fiancée Ann Margaret Grosmaire in the head. Both of them were 19 years old and had been in a relationship for three years. After fighting with each other for 38 hours preceding the incident, Conor shot Ann in the head. Her last words were, “No, don’t!”[[58]](#footnote-58)

 Conor, after the incident, went to the Tallahassee Police Department and told the desk officer, “You need to arrest me. I just shot my fiancée in the head.” Upon being asked by the watch commander to sit in his office, before further proceedings began, Conor began to weep.

 It was later found that Conor had left Ann in his parents’ house, where the incident took place, thinking that she was dead. He gave the keys to the house to the police, who later found Ann there, still alive but unresponsive. She was then taken to the hospital where she was kept alive on the life support system.

 Ann’s parents, who were by her side in hospital, kept praying. The family being devout Catholics, could only find their solace in prayer. However, Ann was certain that she was not going survive and believed that God always did ‘wondrous things’. It was then that she started saying those two words, ‘forgive him’! Listening to this, her father’s response was frantic and he said that it was impossible. But Ann kept repeating it, she constantly kept asking for forgiveness for Conor.

 Prior to the shooting the Grosmaires had a healthy relation with Conor, who had accepted him in all possible ways. To them it came as an utter shock that Conor was the one who had shot their daughter and put her on death’s bed. Despite all the past relations, it was difficult for the Grosmaires to accept Ann’s wish to forgive Conor.

 Conor’s parents, after listening to the news, hurried to the hospital to visit Ann. The close ties between the two families added emotional complications. However, these ties also helped them to realize and understand each other’s pain and loss. As Andy (Ann’s father) said after meeting with Michael (Conor’s father), “I knew that we were somehow together on this journey. Something had happened to our families, and I knew being together rather than being apart was going to be more of what I needed.”

 By this time, Ann’s condition did not improve, and she was removed from life support. Andy felt compelled to forgive Conor, as a part of his Christian faith and being a father, trying to fulfil his daughter’s last wish.

 Kate, Ann’s mother, was on Conor’s list of five people who could visit him in jail. Kate felt burdened by the thought of meeting the person who murdered her daughter. She said, “Before this happened, I loved Conor. I knew that if I defined Conor by the one moment- as a murderer- I was defining my daughter as a murder victim. And I could not allow that to happen.”

 After the charges for first-degree murder were filed, Grosmaires understood that Conor would at least receive a life sentence under the retributive justice system. However, they realized that they did not want him to spend his life in prison. Shortly after, they heard about restorative justice from an Episcopal priest who worked as a chaplain in the Florida prison system. But, the problem posed in front of them was that this system was not designed for cases of violence, and murder cases in particular. It was even more difficult for their case because Florida had not adopted restorative justice in any form.

 Both, the Grosmaires and McBrides, had continued to spend time and support each other in the time of their loss. They both wanted to resolve the case through restorative justice, despite the odds. Julie’s (Conor’s mother), research led her to Sujatha Baliga, a former public defender and the director of restorative justice project at the National Council on Crime and Delinquency in Oakland.

 Sujatha was shocked by the unusual request she received from both the families and had her apprehensions in applying a restorative justice form to this murder case. After constant persistence from Kate and Julie both and listening to the circumstances of the case, she said, “I just couldn’t keep saying no.”

 The process soon began with a conference call among McBrides, Grosmaires, Baliga, Conor’s attorney, and DeFoor (the episcopal priest). Once everybody was convinced that the matter was suitable for mediation, the only trouble left was to convince the prosecutor, Jack Campbell. Campbell, after doing his own research on restorative justice and being assured that it would not violated his duty towards the community in general, called Conor’s lawyers to discuss the details.

 Despite all the odds, the restorative circle started on June 22, 2011. Baliga made sure that the process was as humanized as possible, towards the victims, the offender as well the offender’s family. To make sure that Ann was represented through the session too, her belongings were kept in the circle.

 The sessions took place in a similar format as a usual VOM, except the fact that the attorneys were also present with the parties. Both the parties expressed how the incident had affected them. The Grosmaires spoke of Ann, her life, her dreams and how badly impacted they were after her death. Andy spoke of what Ann loved to do and how she wanted to open a wildlife refuge after graduating from college.

 They talked in detail about her life, her infanthood, childhood, her adolescence and her dynamism in college. Baliga recalls how the circumstances were tough, despite the relations between the families. She said, “She (Kate) did not spare him (Conor) in any way the cost of what he did.”

 Campbell said, “It was excruciating to listen to them talk, to look at the photo there. I still see her. It was as traumatic as anything I have ever listened to in my life.” Everybody else present in the room felt the intensity of the situation and the rising emotions, including Conor. In a way, he was not just the offender, he was a victim too, for he had lost his fiancée.

 He later acknowledged how difficult it was to listen to their pain and to know that his actions had caused it. Afterwards, when it was Conor’s turn to tell his story and explain how it happened, he said that it was difficult for him to get started but once he had, the words came out of his mouth effortlessly.

 He talked about the fight that they had had the morning he shot Ann. He explained how they kept fighting frequently and despite the love they had for each other, they felt frustrated. They had been fighting since the morning, and things kept escalating quickly. After many rounds of shouting, and emotional outbursts, Ann said that she wanted Conor dead.

 Conor then hurried to take a shot gun from his father’s closet and had locked the door, when Ann started banging it. Conor gained control of his thoughts, kept the gun on the table, and opened the door for Ann. He asked her what was wrong and how he could help her. Ann said that Conor did not care for her and she wanted to die. Conor, who admitted about his temper issues, said that he lost his mind at that time, picked up the gun, and shot at her.

 This confrontation proved particularly difficult for the Grosmaires, who were under the presumption that the incident was probably an accident. Baliga recalled a change in Andy’s demeanor. Acknowledging the sudden increase in tension, they halted the session when Campbell suggested to end the dialogue early. Kate, however, did not agree to it.

 When the session resumed, Conor accepted the full responsibility of his act. He said, “What I did was inexcusable. There is no why, there are no excuses, there is no reason.” The McBrides were equally shocked to hear what exactly had happened. While Julie could not believe that her son had done this, Michael regretted having kept a shotgun which he never imagined would have harmed another person.

 After this was over, Baliga asked the Grosmaires what they wanted the restitution to look like. It was understood that this restitution would be in addition to the punitive sentence. Thus, the Grosmaires demanded that Conor does some good work for the society because Ann was not there to do her share and it was something she always wanted to do.

 As far as the duration of the prison sentence was concerned, Grosmaires came up with a range of 10-15 years of sentence, and the McBrides agreed too. But, the mediation took place in a restorative-circle format and thus, it was important that the decision was reached with a consensus of all parties present. Campbell, being the representative of the retributive justice system, said that he needed to consult with the community leaders, heads of domestic violence shelter, and other authorities concerned.

 Three weeks later, Campbell gave Conor a choice between 25 years of imprisonment and 20 years of imprisonment plus 10 years of probation. Conor chose the latter. Campbell, justified why he needed to consult the others and how they came up with the figure. He said that he needed to feel certain that what he did was right.

Sujatha Baliga, in her article, presents a different viewpoint and struggle related to the case. She expressed the concerns she had about taking this case and the difficulties she faced once she accepted it. As she had said, one of the biggest challenges was introducing a restorative justice model in Florida. Even in California, where restorative justice is relatively popular, Baliga dealt with minor crime cases, mostly involving juveniles. The thought of handling a homicide case, in this case a first-degree murder, made her very uncomfortable.[[59]](#footnote-59)

Further, she explains her journey through this case and the difficulties she faced to explain to people what she was about to do. It started with Conor’s attorney, who after being told about a restorative circle said, “Never heard of anything like it. You want us all to sit down together and figure out what should happen to Conor? Face to face inside jail?”[[60]](#footnote-60) Baliga went on to explain him that restorative justice practices were prevalent across the world and have been practiced in USA for a while too. After he understood that Baliga was not a member of the defense team but a neutral who would facilitate the dialogue, he understood things better and agreed to give it a try.[[61]](#footnote-61)

 Baliga admits that it did not come as a shock when she received a similar response from others. The prosecutor, the prison staff, reporters, and the community members, nobody had heard about such a process before. However, to her surprise, everyone was eager to learn about it and approved of it, for the uniqueness of the process and the humane element involved. “Each person whose approval or help I needed would stay on the phone just a few minutes longer. In those extra moments I felt hearts and minds open to a different way of doing things,”[[62]](#footnote-62) she added.

 She explains the honesty, and bravery she witnessed that day and the willingness to try something that is not included in the criminal justice system. She said that the retributive system rarely sees the importance and need of including the victims in deciding what happens to the people who have done unimaginable damage to their lives.[[63]](#footnote-63) Likewise, the retributive system does not recognize redemption or allowing the offender the opportunity to repair the irreparable before entering the doors of the courthouse.[[64]](#footnote-64)

**4.1 POINTS OF ANALYSIS**

 The biggest question that remained was, ‘has the restorative-circle (VOM) worked’? On a larger scale, ‘had it met the ends of community justice’?

 To answer these questions, there are several aspects that need to be considered. First, comparing the outcome of this case with the goals of a VOM model, it is clear that all objectives were fulfilled. The offender was held accountable, the victims received closure, and the ways of restitution were agreed upon. Further, the punitive sentence was also decided through the restorative circle.

 It is the Author’s understanding that an underlying contention against the use of restorative justice techniques in severe violence cases has been that one cannot do away with the punitive sentence in such cases, and mere restitution is not enough to ensure accountability of the offender and ensure community justice. This case sets the perfect example where restorative justice was used to seek restitution and at the same time the punitive sentence was determined too. While the restorative circle was held ‘in lieu’ of a trial, it achieved what a trial would have. Additionally, the victims came up a with a restitution agreement, which seldom happens in severe violence cases.

 It is important to consider that the dynamics of the case were different than most of the other murder cases. Here, both the families were emotionally related and recognized each other’s loss. The offender in this case, Conor, had himself surrendered to the police and accepted that he was the one responsible for Ann’s death. Another emotional dimension was introduced with Ann’s wish to forgive Conor. All these were the motivating factors for both, the Grosmaires and the McBrides to resort to a restorative circle and not go to a trial.

 It is unlikely that all such circumstances will be present in any other murder case, and thus, both the parties may not agree to let go of a trial and resolve matters entirely through VOM or any other RJ model. However, there are numerous cases where the offenders plead guilty. We have also seen that victims’ families have shown positive attitude and high willingness towards VOM practices. Thus, it could prove beneficial for both the parties to undergo a restorative justice method and resolve the case out of court.

 Further, the overall process proved more satisfactory for the victims, who were given a say in the entire process. Unlike the retributive justice system, the Grosmaires were given an opportunity to determine the duration of prison sentence for Conor. Kate had earlier admitted to Baliga that she did not have much faith in the rehabilitative abilities of a prison and thus did not want Conor to serve more than 5 years of sentence. However, after listening to Conor’s story and realizing that Ann’s death was not an accident, she gave a range of 5-15 years of imprisonment. This shows the scope of flexibility available in a restorative circle and the amount of power available to the victims in determining the final outcome.

 Another aspect that has been highlighted in this case is the sensitivity towards the offender’s family. There are several proponents who have often said that VOM should focus on the needs of the offender’s family as well, which has often been questioned by the rest. The biggest one being, why do they matter and why should they be included in the discussion of justice and capital punishment.[[65]](#footnote-65) While some think that the offender’s family has contributed to the crime by raising a criminal, others hold them responsible for raising a child in abusive conditions.[[66]](#footnote-66)

 On the contrary, the proponents feel that the pain of offender’s families is often overshadowed by the pain of victim’s family, however, the loss of losing a loved one remains the same in both cases. Although the offenders, after conviction, start getting termed as a murderer, convicted felon, or an inmate, they still remain a child, mother, father, brother or sister to their family members.[[67]](#footnote-67) The family members are not just only enraged by their loved one’s actions but also by the shame with which society burdens them.

 The McBride case has not only given the society, practitioners, and scholars a starting point to talk about VOM/ RJ (for crimes of severe violence) in lieu of trial, but also given them a push to start talking more about it in post-conviction cases. The Grosmaires, by participating in several programs to spread awareness about the restorative justice models, and the required changes in the criminal justice system have set an example for others.[[68]](#footnote-68)

1. **CRITICAL ANALYSIS**

While the above-mentioned analysis presents author’s opinions and support for using VOM or Restorative Justice in lieu of trial, in cases of extreme violence cases, there are certain points of criticism that may arise among various groups of the societies. Given below is a list of some of the possible critics and their probable point of view.

1. **Prosecutors**: Attorneys, prosecutors in particular, have an image of an adversary to the offender, thus, in a system that is sensitized towards offenders and their families, it is obvious that they may have some concerns. One of the points that came up in the McBride case, from the prosecutor’s side, was about ensuring community justice. Campbell said that he agreed to try a restorative circle in this case, only after he was sure that he did not violate his duty toward every other parent and child in the town. Letting go of a trial and settling a case through restorative circle, for prosecutors, meant ‘being easy’ on the offender. While Campbell agreed to it, other members of the fraternity may not.

The job of any prosecutor is to ensure justice, not only towards the immediate victim(s) but also the victims at large; the society. Many prosecutors may contend that restorative justice/VOM, while offering a chance of participation to the immediate victims does not seek participation from the community at large. The community has adopted the retributive justice system for ages and has established faith in it, where they are represented by the jury. Thus, to introduce a shift in the criminal justice system, and adopting restorative justice models, does not serve the community’s rights and interests.

Additionally, prosecutors may always question whether such measures actually ensure reformation of the criminal and reduce recidivism rates. A further disregard towards the practice may also result from the diminishing role of a prosecutor in a restorative justice model in comparison to an ordinary trial. It is known that other dispute resolution methods often receive lesser support from the attorneys because of their diminished participation. The same could be the case here.

1. **Domestic Violence Advocates**: The McBride case is also a case of domestic violence. As discussed before, the murder was a result of an escalated fight between the couple and happened in a moment of uncontrollable anger. For a layman, this may not be an incident of domestic violence because no physical abuse in the past was involved. However, for a domestic violence advocate, there were elements of emotional abuse involved, and thus, a new dimension is added to the case.

The domestic violence advocates are likely to criticize the practice of restorative circles in lieu of a trial, because it may give signal to offenders, that it is acceptable to indulge in emotional and physical domestic violence, and hope to get away with it.

Conor was sentenced for murder, and domestic violence (as domestic violence advocates may contend) for 20 years, which is a short sentence for both the offences combined in the traditional justice system. For people, who may be involved in domestic violence alone, this may not set a good example. One of the objectives of the retributive justice system is to create deterrence among others, which is unlikely to be achieved by any restorative justice model.

1. **Community**: In a multi-cultural community, as ours, the definition of justice may vary largely. While some may be satisfied with an outcome of a particular case, others may not be. Similarly, there are several facets of the McBride case that may be seen differently by different members of the community.

First, the offender in this case, is a White-American kid who practiced a Christian faith. No matter how advanced the society may have become, discrimination still prevails on its various levels, be it racial, religious, ethnicity-based or nationality-based. Many members of the community may ask whether an African-American, a Mexican, a Muslim or an immigrant would have been able to do away with a trial, and whether the authorities would have supported the use of restorative circle then?

Second, there have been various emotional dimensions involved in this case, beginning from Ann’s request to forgive Conor, to the Grosmaires’ strong religious and spiritual beliefs. Though Grosmaires wanted to let go a trial based on these factors, and still believe that justice has been achieved, other members of the community, perhaps the majority, may hold a different position. For most of them, justice can only be achieved through a retributive system, and hence, post-conviction VOMs would be the farthest they would want to go with restorative justice.

These are only a few concerns that may be raised within a community. It is difficult to generalize an opinion for large numbers of people; however, it may help to think of all possible reactions and concerns that they may have.

1. **CONCLUSIONS**

 Victim-Offender Mediation and other restorative justice models have spread rapidly across various jurisdictions in the world and in the United States, since its commencement. Traditionally, these practices are being used to resolve minor and property related crimes, juvenile cases, and occasionally cases of assault. However, various studies, and cases present a great example of its effectiveness in severe violence cases, including murder cases.

 These practices give victims, their families, offenders, and their families, a chance to get over the past and determine what they want for the future. While most of the VOMs are done post-conviction, Conor’s McBride’s case has set an example that it can be done in lieu of a trial as well, and can prove equally effective.

 Many jurisdictions in the country still have not introduced restorative justice models in their criminal justice system, where it is much needed. Little has been said and written about such cases, and considerable study, research, and analysis ought to be invested. Thus, spreading awareness is the key in this situation, where all concerned parties have an eminent role to play.

To introduce a shift in the system, overnight, is impossible but slowly, by combining past experiences and research with new reforms and innovation, a shift in the present criminal justice system is possible. Such a shift would care more about restoration than retribution, give the real victims (not the state) a chance of direct participation to achieve the justice they want for themselves, and ensure higher levels of satisfaction.

1. Mark S. Umbreit, *The Handbook of Victim Offender Mediation: An Essential Guide to Practice and Research* xxvii (1st ed. 2001). [↑](#footnote-ref-1)
2. Id. at xxxvii-xxxviii [↑](#footnote-ref-2)
3. Id. [↑](#footnote-ref-3)
4. Id. at 255 [↑](#footnote-ref-4)
5. Id. [↑](#footnote-ref-5)
6. Mark S. Umbreit, *Mediation of victim offender conflict umbreit*, 1988 J. Disp. Resol. 85 (1988). [↑](#footnote-ref-6)
7. Id. [↑](#footnote-ref-7)
8. Id. at 87 [↑](#footnote-ref-8)
9. Mark S. Umbreit, *The Handbook of Victim Offender Mediation: An Essential Guide to Practice and Research* xlii-xliii (1st ed. 2001). [↑](#footnote-ref-9)
10. Id at xliii. [↑](#footnote-ref-10)
11. Id. [↑](#footnote-ref-11)
12. The first replication of VORP (Canada) in the United States occurred in 1978 when the Mennonite Central Committee, probation staff, and a local judge in Elkhart, Indiana, began accepting cases. By the mid-1990s, a network of approximately 150 victim offender mediation or reconciliation programs existed in the United States. [↑](#footnote-ref-12)
13. John R. Gehm, *Victim-Offender Mediation Programs: An Exploration of Practice and Theoretical Frameworks,* 1 (1) Western Crim. Rev. (1988) <http://westerncriminology.org/documents/WCR/v01n1/Gehm/gehm.html> [↑](#footnote-ref-13)
14. Mark S. Umbreit, *The Handbook of Victim Offender Mediation: An Essential Guide to Practice and Research* xliii-xlv (1st ed. 2001). [↑](#footnote-ref-14)
15. Id. [↑](#footnote-ref-15)
16. John R. Gehm, *Victim-Offender Mediation Programs: An Exploration of Practice and Theoretical Frameworks,* 1 (1) Western Crim. Rev. (1988) <http://westerncriminology.org/documents/WCR/v01n1/Gehm/gehm.html> [↑](#footnote-ref-16)
17. Id. [↑](#footnote-ref-17)
18. Mark S. Umbreit, *The Handbook of Victim Offender Mediation: An Essential Guide to Practice and Research* xliii-xlv (1st ed. 2001). [↑](#footnote-ref-18)
19. John R. Gehm, *Victim-Offender Mediation Programs: An Exploration of Practice and Theoretical Frameworks,* 1 (1) Western Crim. Rev. (1988) <http://westerncriminology.org/documents/WCR/v01n1/Gehm/gehm.html> [↑](#footnote-ref-19)
20. Id. [↑](#footnote-ref-20)
21. Marty Price, *Personalizing Crime: Mediation Produces Restorative Justice for Victims and Offenders,* 7. Disp. Resol. Mag. 8-11 (2000). [↑](#footnote-ref-21)
22. Mark S. Umbreit, *The Handbook of Victim Offender Mediation: An Essential Guide to Practice and Research* 174-175 (1st ed. 2001). [↑](#footnote-ref-22)
23. Id. [↑](#footnote-ref-23)
24. Id. at 255 [↑](#footnote-ref-24)
25. Marty Price, *Personalizing Crime: Mediation Produces Restorative Justice for Victims and Offenders,* 7. Disp. Resol. Mag. 8-11 (2000). [↑](#footnote-ref-25)
26. Mark S. Umbreit et al., *Victims of Severe Violence Meet the Offender: Restorative Justice Through Dialogue,* 6 Int’l Rev. of Victimology 321, 323 (1999). [↑](#footnote-ref-26)
27. Marty Price, *Personalizing Crime: Mediation Produces Restorative Justice for Victims and Offenders,* 7. Disp. Resol. Mag. 8-11 (2000). [↑](#footnote-ref-27)
28. Elizabeth Beck et al., *In the Shadow of Death: Restorative Justice and Death Row Families,* 23 (1st ed. 2007). [↑](#footnote-ref-28)
29. Id. at 24. [↑](#footnote-ref-29)
30. Rachel Alexandra Rossi, *Post-Sentence Victim-Offender Mediation in Capital Cases,* 9 Pepp. Disp. Resol. L. J. 185, 195 (2008-09) [↑](#footnote-ref-30)
31. Id. [↑](#footnote-ref-31)
32. Id. at 192. [↑](#footnote-ref-32)
33. Id. [↑](#footnote-ref-33)
34. Id. [↑](#footnote-ref-34)
35. Id. [↑](#footnote-ref-35)
36. Mark S. Umbreit et al., *Victim-Sensitive Offender Dialogue in Crimes of Severe Violence: Differing Needs, Approaches, and Implications,* 6,7 (2001). [↑](#footnote-ref-36)
37. Id. at 8 [↑](#footnote-ref-37)
38. Id. [↑](#footnote-ref-38)
39. Id. [↑](#footnote-ref-39)
40. Id. at 9 [↑](#footnote-ref-40)
41. Id. [↑](#footnote-ref-41)
42. Id. at 10 [↑](#footnote-ref-42)
43. Such assistance was sought from Dr. Mark Umbreit at the University of Minnesota School of Social Work. [↑](#footnote-ref-43)
44. Mark S. Umbreit et al., *Victim-Sensitive Offender Dialogue in Crimes of Severe Violence: Differing Needs, Approaches, and Implications,* 6, 10 (2001) [↑](#footnote-ref-44)
45. Id. [↑](#footnote-ref-45)
46. Mark S. Umbreit et al., *The Impact of Victim-Offender Mediation: Two Decades of Research*, 65 Fed. Probation, 29, 30 (2000-2001). [↑](#footnote-ref-46)
47. Id. [↑](#footnote-ref-47)
48. Id. [↑](#footnote-ref-48)
49. Id. [↑](#footnote-ref-49)
50. Id. [↑](#footnote-ref-50)
51. Id. at 30-31 [↑](#footnote-ref-51)
52. Mark S. Umbreit et al., *Victims of Severe Violence Meet the Offender: Restorative Justice Through Dialogue,* 6 Int’l Rev. of Victimology 321, 330(1999). [↑](#footnote-ref-52)
53. Id. [↑](#footnote-ref-53)
54. Id. [↑](#footnote-ref-54)
55. Mark S. Umbreit, *The Handbook of Victim Offender Mediation: An Essential Guide to Practice and Research* 269 (1st ed. 2001). [↑](#footnote-ref-55)
56. Id. at 270 [↑](#footnote-ref-56)
57. Id. [↑](#footnote-ref-57)
58. Paul Titlis, *Can Forgiveness Play a Role in Criminal Justice?* The New York Times Magazine (Jan 4, 2013) <http://www.nytimes.com/2013/01/06/magazine/can-forgiveness-play-a-role-in-criminal-justice.html>; All the following facts of this case have been taken from this article, unless cited otherwise. [↑](#footnote-ref-58)
59. Sujatha Baliga, *The Day the Jail Walls Cracked: A Restorative Plea Deal,* Tikkun Magazine (January 10, 2012) <http://www.tikkun.org/nextgen/the-day-the-jail-walls-cracked-a-restorative-plea-deal> [↑](#footnote-ref-59)
60. Id. [↑](#footnote-ref-60)
61. Id. [↑](#footnote-ref-61)
62. Id. [↑](#footnote-ref-62)
63. Id. [↑](#footnote-ref-63)
64. Id. [↑](#footnote-ref-64)
65. Elizabeth Beck et al., *In the Shadow of Death: Restorative Justice and Death Row Families,* 4 (1st ed. 2007). [↑](#footnote-ref-65)
66. Id. [↑](#footnote-ref-66)
67. Id. at 5 [↑](#footnote-ref-67)
68. Kate Grosmaire has recently published a book titled, *Forgiving my Daughter’s Killer,* where she beautifully describes the liberating power of forgiveness. Part memoir, part spiritual testimony, this book is a story of a family whose faith was put to test and so found the capacity to do far more than they could have thought or imagined. [↑](#footnote-ref-68)